

years of proceedings involving Verizon and the CLECs. See Guerard/Canny/DeVito Decl. ¶¶ 147-148; see also App. B, Tab P-12. We explained further that the Plan “provide[s] incentives that are sufficient to foster post-entry checklist compliance.” Memorandum Opinion and Order, Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd 3953, ¶ 433 (1999); Guerard/Canny/DeVito Decl. ¶¶ 162-163.

44. Although the Pennsylvania PUC has found that its Plan provides “adequate financial incentives [for Verizon] to continue to meet its legal obligations after it has received approval under section 271,” it has opened a new proceeding to consider what Plan should be in place in Pennsylvania going forward. PUC Consultative Report at 3. The PUC has adopted a “rebuttable presumption that the features of the NY remedies plan should be made applicable and tailored to Pennsylvania.” Letter from James J. McNulty, Secretary, Pennsylvania Public Utility Commission, to Julie A. Conover, Vice President and General Counsel, Verizon, Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region InterLATA Service in Pennsylvania, Docket No. M-00001435 at 4 (filed June 6, 2001) (“PA PUC 271 Letter”) (App. B, Tab A-3). Verizon has submitted its proposal for modifying the current Pennsylvania Plan, a copy of Verizon’s proposal is in Attachment 5 to our Reply Declaration.

45. Although the PUC has adopted a “rebuttable presumption” in favor of using the New York Plan in Pennsylvania, Verizon has proposed using a different Plan for Pennsylvania (“Proposed PA Plan”). This Plan, which is responsive to criticisms raised against the existing Pennsylvania Plan, is fairer to both Verizon and the CLECs, more accurate, and significantly easier to understand and administer than the New York Plan. However, in light of the

presumption adopted by the PUC, Verizon also submitted a slightly modified version of the New York Plan (“Modified NY Plan”). Verizon proposes that the Pennsylvania PUC adopt the Modified NY Plan if it rejects Verizon’s Proposed PA Plan.

46. AT&T and WorldCom, however, argue that Verizon cannot rely on the incentives that would be created by the adoption of either of these plans because Verizon previously opposed proposals to import the New York Plan into Pennsylvania. See AT&T at 64; AT&T’s Bloss/Nurse Decl. ¶ 87; WorldCom at 16-17; WorldCom’s Kinard Decl. ¶ 33. Verizon continues to believe that the current Pennsylvania Plan, which was developed after extensive litigation involving Verizon and the CLECs, satisfies the Commission’s requirements, especially as recently revised. However, just as it was the PUC that devised the current Pennsylvania Plan, the PUC has now adopted a rebuttable presumption in favor of adopting the New York Plan. In response to the PUC’s direction, Verizon has proposed two Plans, both of which satisfy the Commission’s requirements. This is not a case of Verizon making future promises, but rather a continuation of the PUC’s long-standing and continued attention to the development of a suitable Plan for Pennsylvania.

47. In this section of our Reply Declaration, we first address criticisms that have been raised with the current Pennsylvania Plan. We then describe the Proposed PA Plan and the Modified NY Plan that Verizon submitted to the Pennsylvania PUC on July 25, 2001.

#### Current Pennsylvania Performance Assurance Plan

48. AT&T and WorldCom argue that the Pennsylvania Plan is inferior to the Performance Assurance Plans in place in New York, Massachusetts, and Connecticut, claiming that, despite similar performance, Verizon pays far less under the Pennsylvania Plan than it pays

under the New York Plan. See WorldCom at 16; WorldCom's Kinard Decl. ¶ 32; AT&T's Bloss/Nurse Decl. ¶ 86 & Exh. F.

49. AT&T's and WorldCom's claims, however, do not take into account the Pennsylvania PUC's recent augmentation of the Plan, which requires Verizon to pay \$25,000 per CLEC for each submeasurement it misses for four or more consecutive months. As shown in Attachment 6 to our Reply Declaration, if the current Plan had been in effect in the year 2000, Verizon would have paid \$16.7 million under the Plan from July through December 2000, or \$33.4 million on an annualized basis. (Because Verizon's first reports under the Plan were made in April 2000, July 2000 was the first month in which Verizon could have missed a measurement for four consecutive months. AT&T similarly estimated Verizon's 2000 payments under the Pennsylvania Plan on an annualized basis. See AT&T's Bloss/Nurse Decl. Exh. F.) That \$33.4 million in remedy payments would have amounted to 6.6 percent of Verizon's 2000 net return, which is greater than the 6.2 percent of its net return (\$36.7 million) that Verizon actually paid in New York in 2000. Thus, the current Pennsylvania Plan is at least as effective as the New York Plan, and clearly "falls within the zone of reasonableness." Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut, Memorandum Opinion and Order ¶ 77, CC Docket No. 01-100, FCC 01-208 (rel. July 20, 2001).

50. AT&T also argues that the Pennsylvania Plan cannot be effective because it has been in place for over a year and Verizon "still does not provide nondiscriminatory service to CLECs." AT&T's Bloss/Nurse Decl. ¶ 73. In fact, Verizon's performance has improved dramatically, even under the original Plan devised by the Pennsylvania PUC. For example, in

March 2001, Verizon's remedy payments were 25 percent less than the amount it paid in December 2000, even though it was reporting on more measurements and reducing the number of measurements reported as UD or UR. See Attachment 6. As we explained in our Declaration, Verizon has provided excellent service to CLECs in recent months, missing just over 6 percent of the tens of thousands of performance measurements subject to remedies. See Guerard/Canny/DeVito Decl. ¶ 154. This level of performance has continued in May and June.

51. Thus, there is no basis to AT&T's claim that Verizon "mishandles nearly 1 out of every 4 CLEC-initiated transactions." AT&T's Bloss/Nurse Decl. ¶ 73. That claim is mistaken on a number of levels. First, AT&T bases its statement on Verizon's testimony before the Pennsylvania PUC in February that it satisfied, on an aggregate level, approximately 77 percent of the performance measurements with standards each month. See id. As we explained in our declaration, Verizon can miss a measurement even while providing excellent service. For a measurement with a 95 percent benchmark, performance of 94.99 percent counts as a miss. See Guerard/Canny/DeVito Decl. ¶ 165. Similarly, for parity measurements, if volumes are large enough, a small difference in retail and wholesale performance can be statistically significant and count as a "miss" even though performance for both is excellent. For example, in April 2001, Verizon missed 0.33% of CLEC UNE-P provisioning appointments requiring no dispatch, while missing 0.11% of analogous retail appointments. This is scored as a miss, even though Verizon's performance was excellent in both cases. Therefore, AT&T makes an entirely unwarranted jump from the percentage of aggregate measures satisfied to the percentage of CLEC transactions "mishandled."

52. Second, a better measurement of Verizon's performance is the number of CLEC specific measurements that it has satisfied, as measured under the Performance Assurance Plan.

Disaggregating performance data by CLEC gives greater weight to those performance measurements that reflect services that many CLECs use, while using aggregate data weights all measurements equally. As noted above, Verizon misses just over 6 percent of the thousands of CLEC-specific measurements subject to remedies each month.

### Tier I Remedies

53. As we explained in our Declaration, Tier I of the Pennsylvania Plan encompasses two types of payments, based on the Pennsylvania PUC's determination that one who "does not get the service . . . should not have to pay." See Opinion and Order, Joint Petition of NEXTLINK Pennsylvania, Inc., et al., for an Order Establishing a Formal Investigation of Performance Standards, Remedies, and Operations Support Systems Testing for Bell Atlantic-Pennsylvania, Inc., Docket No. P-00991643, at 158 (Pa. Pub. Util. Comm'n rel. Dec. 31, 1999) ("December 31, 1999 Order") (App. B, Tab. R-8). First, Verizon does not bill CLECs for services never received. If a CLEC has received and paid for a service and the CLEC then has an out of service condition for a period greater than 24 hours, Verizon credits the CLEC proportionate to the amount of time that the out of service condition persists. See Guerard/Canny/DeVito Decl. ¶ 157.

54. Second, the Pennsylvania PUC established the additional requirement that, if Verizon misses a standard within a 30-day period and a CLEC does not receive a service, then the CLEC is to receive "its actual, out-of-pocket payment on a pro-rated basis." December 31, 1999 Order at 159. The criteria for receiving such payments are as follows: (i) Verizon must miss the standard for a measurement within a 30-day period; (ii) a CLEC does not receive a service covered by that measurement; and (iii) the CLEC has made an "actual, out-of-pocket payment" for that service. See Guerard/Canny/DeVito Decl. ¶¶ 156, 158.

55. Although AT&T and WorldCom argue that this aspect of Tier I is not self-executing, see AT&T at 62; AT&T's Bloss/Nurse ¶ 82; WorldCom at 15; WorldCom's Kinard Decl. ¶¶ 25-26, they do not explain how Verizon could know what out-of-pocket payments a CLEC has made in anticipation of receiving a service. Recognizing as much, the Pennsylvania PUC held that recovery under this aspect of Tier I "cannot occur unless a CLEC can support a claim of out of pocket expenses." Opinion and Order, Joint Petition of NEXTLINK Pennsylvania, Inc., et al., for an Order Establishing a Formal Investigation of Performance Standards, Remedies, and Operations Support Systems Testing for Bell Atlantic-Pennsylvania, Inc., Docket No. P-00991643, at 68 (Pa. Pub. Util. Comm'n rel. Sept. 1, 2000). Verizon is not aware of any CLEC having requested such a refund, although all are aware that this option exists.

#### Tier II Remedies

56. As we explained in our Declaration, the Pennsylvania PUC also established "liquidated damages" payments that apply when Verizon misses a submeasurement for two or more consecutive months. See Guerard/Canny/DeVito ¶¶ 159-161. We demonstrated that the Plan, which contains no cap on payments, places at risk an amount in proportion to that in the New York Plan, which the Commission has now approved three times. See id. ¶¶ 162-163; see also Gertner/Bamberger/Bandow Decl. ¶¶ 27-29 (explaining that comparably poor performance in handling CLECs' DSL orders in Pennsylvania and New York would result in roughly equivalent remedy payments).

57. AT&T and WorldCom argue that the payment amounts under Tier II are inadequate to deter anticompetitive conduct. See AT&T at 62-63; AT&T's Bloss/Nurse Decl. ¶¶ 83-85; WorldCom at 15-16; WorldCom's Kinard Decl. ¶¶ 27-32; see also DOJ Eval. at 15 & n.60. Their arguments are based on the unsubstantiated assertion that Verizon can "manipulate

its performance” on a limited number of performance measures or for a limited number of CLECs. AT&T and WorldCom, however, can point to no evidence of Verizon having taken such actions in Pennsylvania or in any other state in which it operates. In fact, AT&T’s and WorldCom’s fears that Verizon would or could selectively target a single CLEC, a limited number of performance measurements, or manipulate its performance to miss measurements only in alternate months, are unfounded.

58. AT&T and WorldCom take issue with our claim that Verizon could face \$200 million in annual remedy payments under the Plan. See AT&T at 63; AT&T’s Bloss/Nurse Decl. ¶¶ 84-85; WorldCom’s Kinard Decl. ¶ 28. We explained in our Declaration that each of the 80 CLECs currently operating in Pennsylvania are, on average, eligible for Tier II remedy payments – meaning that there are 10 or more observations – on 40 of the 110 submeasurements included in the Pennsylvania Plan each month. Forty is the average; larger CLECs are eligible for payments on as many as 80 submeasurements each month. We further assumed that if Verizon suffered a severe meltdown in performance, it would miss the same 25 submeasurements each month for 35 CLECs. Such a meltdown would result in \$200 million in payments. See Guerard/Canny/DeVito Decl. ¶ 162. It would take a similarly severe performance meltdown for Verizon to reach the annual caps under the New York or Massachusetts Plans. And, under the actual performance conditions experienced in both Pennsylvania and New York last year, as we explained above, Verizon is subject to slightly more liability in Pennsylvania than in New York. See supra ¶ 49.

59. WorldCom contends that Verizon does not accurately calculate Tier II remedy payments, pointing to its April and May remedy payment reports for OR-6-01. See WorldCom at 16; WorldCom’s Kinard Decl. ¶ 31. WorldCom operates under two different company codes in

Pennsylvania: MCImetro and WorldCom Technologies (formerly known as MFS). Verizon correctly calculated that it missed OR-6-01 – a measurement that is assessed on an aggregate, not a CLEC-specific, basis – for WorldCom Technologies in both April and May 2001. Verizon also correctly calculated that a remedy payment for OR-6-01 was due to WorldCom as MCImetro in May 2001. (Thus, WorldCom received remedy payments for OR-6-01 twice in that month – once as MCImetro, once as WorldCom Technologies.) Verizon, however, failed to note that WorldCom was eligible for remedy payments for OR-6-01 as MCImetro in April 2001 because MCImetro had order activity in that month. Verizon intends to provide WorldCom (as MCImetro) with the remedy payment that was missed in April 2001. In any event, WorldCom has raised an issue with only one of the roughly 8800 calculations Verizon makes each month in determining whether it owes remedy payments.

60. WorldCom further claims that Verizon should have paid it \$25,000 for the four-consecutive-month miss on OR-6-01 from February through May 2001. However, the enhanced payments the Pennsylvania PUC and Verizon agreed to go into effect beginning with July 2001 performance data. See PA PUC 271 Letter at 3-4. Verizon, therefore, was only obligated to pay \$5,000 in remedy payments – which it did, \$4,000 to WorldCom as MCImetro and \$1,000 to the PUC (and another \$4,000 to WorldCom Technologies and \$1,000 to the PUC) – although WorldCom was free to petition the Pennsylvania PUC to increase the required payment to \$25,000. See Pennsylvania Public Utility Commission Performance Assurance Plan for Verizon-Pennsylvania, Inc at 5 (May 23, 2001) (“App. B, Tab P-12”). Verizon’s performance on OR-6-01 for all CLECs has steadily improved and, in June 2001, Verizon satisfied the 95 percent benchmark for both Resale and UNE orders.



61. WorldCom also incorrectly asserts that the New York Plan includes more performance measurements than the Pennsylvania Plan. See WorldCom's Kinard Decl. ¶ 30. In fact, while the Pennsylvania Plan includes 110 performance measurements, only 54 were included in the New York Mode of Entry sections at the time the Commission approved the New York application, not 122 as WorldCom contends. WorldCom reaches its higher figure by counting, for example, OR-1-02 UNE POTS and OR-1-02 Resale POTS as two separate measurements in the New York Plan. Under that methodology, however, the Pennsylvania Plan bases remedy payments on about 4,000 measurements each month, as Verizon's performance is measured separately for most measurements for each CLEC operating in Pennsylvania.

62. AT&T and WorldCom also argue that data is improperly aggregated under Tier II. See AT&T at 63; AT&T's Bloss/Nurse Decl. ¶ 83; WorldCom at 16; WorldCom's Kinard Decl. ¶ 30. As we explained in our Declaration, although Verizon's performance on most measurements is assessed at the CLEC-specific level, for certain measurements Verizon's performance is assessed at the CLEC-aggregate level, as in the New York Plan. See Guerard/Canny/DeVito Decl. ¶ 152. For the aggregate measurements, such as interface availability (PO-2), Verizon makes remedy payments to every CLEC that uses the interface if it misses the measurement at the aggregate level. See id. There is simply no truth to AT&T's claim that Verizon limits its remedy payments on aggregate measurements to those CLECs for which Verizon also missed at the CLEC-specific level. In addition, AT&T ignores that, because Verizon's performance for the vast majority of submeasurements is assessed at the CLEC-specific level, it can be required to make liquidated damages payments even though its performance, in the aggregate, satisfies the standard the Pennsylvania PUC established. See Guerard/Canny/DeVito Decl. ¶ 164.

63. WorldCom argues that there is no disaggregation by product or geography in the Plan, so good performance in one area or product can mask bad performance in another. As we explained in our Declaration, whether Verizon has missed a given measurement for a particular CLEC is determined using a weighted average system, to create “apples-to-apples” comparisons. See id. ¶¶ 150, 170-171. (Verizon informed CLECs that it uses this method in its originally filed Performance Assurance Plan, which is Attachment 7 to our Reply Declaration, and Verizon provided the PUC and CLECs with detailed information on the weighted average method in response to a March 14, 2001 data request by the PUC, as shown in Appendix B, Tab D-13 to Verizon’s Application.) For example, for a CLEC that operates only in the Western region of Pennsylvania, Verizon’s performance for that CLEC will be compared only to its retail performance in that region of Pennsylvania. Although it is theoretically possible, as WorldCom suggests, that Verizon could meet a performance measurement while providing out of parity service in a rural region but parity service in an urban region, the same is true under the New York Plan. WorldCom offers nothing more than speculation that Verizon has done so. Moreover, because Verizon reports its performance to the Pennsylvania PUC and to CLECs fully disaggregated by product and geography, any such disparity in different regions or across different products would be easily observed.

64. The Department of Justice takes issue with the escrow provisions of the Plan, contending that they grant Verizon too much discretion. See DOJ Eval. at 16 n.63. We explained the operation of those provisions in our Declaration. See Guerard/Canny/DeVito Decl. ¶¶ 173-174. The New York Plan, which the Commission has approved three times, contains equivalent provisions. Under the New York Plan, as under the Pennsylvania Plan, Verizon may seek a waiver or an exception from payment, which will be filed prior to making payment to the

CLECs. The same criteria – clustering of data, CLEC action, and events beyond Verizon’s control – provide the bases on which Verizon may seek to withhold payment in both New York and Pennsylvania. As in Pennsylvania, Verizon must demonstrate clearly and convincingly that it is entitled to withhold payment. Although CLECs have 10 days to respond to such a request in New York, compared to 5 days in Pennsylvania, the time in New York begins to run with the filing of Verizon’s request, while it begins to run in Pennsylvania upon notice to the CLECs. In addition, Verizon has committed to extend the period of time CLECs have to respond in Pennsylvania to thirty days. See Guerard/Canny/DeVito Decl. ¶ 175.

#### Proposed PA Plan

65. Verizon has proposed a Plan for Pennsylvania that is responsive to the criticisms that have been raised against the current Plan, that incorporates elements of the Plans approved in Texas and New York, and that is similar to Plans Verizon has proposed in Virginia, New Jersey, and the District of Columbia. This Plan is significantly less complicated and, therefore, easier to understand, apply, and monitor than the current New York Plan. Therefore, Verizon has proposed that this Plan be used rather than the Modified NY Plan, discussed below, that it has also submitted to the Pennsylvania Commission.

66. Although certain features of the Proposed PA Plan are the same as the current Pennsylvania Plan – for example, remedy payments increase with the frequency of the performance miss and measurements are evaluated at the CLEC level under both Plans – the Proposed PA Plan differs from the current Pennsylvania Plan in many respects:

- The Proposed PA Plan is based on Verizon’s proposal for adopting the New York Guidelines for Pennsylvania, while the current Plan uses the current Pennsylvania performance measurements.

- Remedies under the Proposed PA Plan are capped at \$189.2 million (36% of Verizon's 2000 Net Return in Pennsylvania), while the current Plan has no cap.
- Remedy payments begin with the first month that Verizon misses a measurement, while the Tier II remedies in the current Plan do not take effect until Verizon has missed a measurement for two consecutive months.
- Remedies are applied based on Verizon's performance for specific products (thus the same submeasurement may have two remedies, one for resale performance, one for UNE performance), while the current Plan imposes remedies based on performance at the submeasurement level using a weighted average.
- Remedy payments increase with the severity of the miss, while under the current Plan there is a fixed dollar amount per miss.
- Remedy payments are higher for CLECs that purchased larger volumes of the deficient service, while under the current Plan there is a fixed dollar amount per miss per CLEC, regardless of volume.
- Remedy payments are made to CLECs through bill credits (or by check if the CLEC no longer operates in Pennsylvania), while under the current Plan payments are made by check.

67. The Proposed PA Plan includes 220 disaggregated performance measurements covering a broad range of pre-ordering, ordering, provisioning, maintenance, network, and billing functions, processes, and products.

68. As with the current Pennsylvania Plan, Verizon's performance on these measurements is either measured against its retail performance (parity measurement) or against absolute standards (benchmark measurements). Whether Verizon has satisfied a parity measurement is determined using the same statistical tests (t-test, modified Z-test, and permutation test) used in New York and in the current Pennsylvania Plan. Whether Verizon has missed a benchmark standard is determined by comparing Verizon's performance to the

benchmark; if performance is worse than benchmark, then Verizon has missed the measurement, as in New York and under the current Pennsylvania Plan.

69. Remedies payments for each of the 220 measurements in Proposed PA Plan are computed on either a “per unit” or a “per measurement” basis, as in the Texas Plan. In addition, misses are designated as “minor,” “moderate,” and “major,” depending on the severity of the miss.

70. Per unit remedy payments are calculated as follows. For example, assume that, for Percent Missed Appointment – No Dispatch – UNE Platform (PR-4-05), Verizon’s wholesale performance for a particular CLEC in July is 6.36 percent, while its retail performance is 1.05 percent, and that this CLEC had 12,500 appointments that month. This is a performance difference of 5.31 percent, which is classified as a moderate miss (for percentage measurements, a performance differential of 0.1% - 4.99% is a minor miss, of 5% - 15% is a moderate miss, and of greater than 15% is a major miss). For moderate misses, Verizon must pay \$75 per unit. The number of units is determined by multiplying the performance difference (here, 5.31 percent) by the CLEC’s volume of orders (here, 12,500), for a total of 663.75 units. At \$75 per unit, Verizon would have to provide this CLEC with \$49,781 in bill credits for missing this one measurement.

71. Per measurement remedies – which are used for measurements that affect all CLECs equally, such as interface availability and response time, contact center availability, and change management notifications – are calculated as follows. For example, assume that, for Percent Change Management Notices Sent on Time (PO-4-01), Verizon’s sends 75% of the notices on time. This is a major miss (the benchmark for PO-4-01 is 95%). Verizon would be required to credit CLECs \$60,000 for this miss, which would be allocated among the CLECs

based on their lines in service as a percentage of lines in service for all CLECs affected by this missed standard.

72. If Verizon misses a measurement for consecutive months, the per unit and per measurement payments are increased. If Verizon misses a measurement for two consecutive months, then payments are increased to 150%. If Verizon misses a measurement for three or more consecutive months, then payments are increased to 200%. Thus, if the miss on PR-4-05 in the above example was the second consecutive month Verizon had missed this measurement for that CLEC, then Verizon would credit that CLEC \$74,671, rather than \$49,781. Similarly, if the miss on PO-4-01 had been the third consecutive month Verizon had missed that measurement, then Verizon would credit the CLECs \$120,000, rather than \$60,000. These increases apply even if Verizon's miss the prior month(s) was of a different level of severity.

73. Because the Proposed PA Plan provides credits for measures with parity standards when there is still a 5% chance that the apparent disparity is actually the result of random variation (known as Type I error), the Proposed PA Plan uses a "K-factor" to correct for Type I errors, as in the Texas Plan. The K-factor applies only to parity measurements and works as follows. After determining the credits that Verizon owes a particular CLEC in a given month, Verizon will rank those measurements by the deviation from parity (from largest deviation to smallest deviation). Then, depending on the "K-factor," Verizon is not required to provide credits for the "K" number of measurements with the smallest deviations from parity. For example, assume that Verizon owes a CLEC credits for 70 parity measurements in July. The "K-factor" table in the Proposed PA Plan when Verizon has missed 70 parity measurements is 8. Therefore, Verizon would have to credit this CLEC for the 62 parity measurements on which Verizon's performance had the largest deviations from parity. The one exception to this is that

measurements Verizon has missed for three or more consecutive months are excluded from the “K-factor” calculation. Verizon must always make credits for these misses and they are not included in determining the “K-factor.”

74. As noted above, the Proposed PA Plan is capped at \$189.2 million, which is equivalent to 36 percent of Verizon’s 2000 Net Return. In addition, as in the current New York Plan, monthly credits to CLECs are capped at one-twelfth of the annual cap, or \$22.3 million. If Verizon’s credits to CLECs in any given month exceed \$22.3 million, credits for all CLECs will be reduced proportionately.

#### Modified NY Plan

75. In light of the Pennsylvania PUC’s rebuttable presumption in favor of adoption of the New York Plan, Verizon has also proposed a version of this Plan tailored for Pennsylvania. Verizon’s proposal for adopting the New York Plan in Pennsylvania begins with the text of the current New York Plan. However, Verizon has proposed limited modifications to the Plan.

76. First, consistent with Verizon’s practice in other states, Verizon has proposed reducing the cap on the Plan based on the smaller net revenue in Pennsylvania. The annual cap on the Modified NY Plan is set at \$189.2 million – with a \$176.66 million cap on the Performance Assurance Plan and a \$6.24 million cap on the Change Control Assurance Plan. This cap is equivalent to 36 percent of Verizon’s 2000 Net Return. The \$176.66 million allocated to the Plan is divided among the Modes of Entry, the Critical Measures, and the Special Provisions sections in the same proportions as under the New York Plan.

77. Second, Verizon has proposed changing the scoring system for determining whether Verizon has missed a performance measurement and the severity of the miss. Under the current New York Plan, for parity measurements, Verizon’s retail and wholesale performance is

compared using the Z- and t-score statistical tests, and a performance score of -1 is assigned if the statistical score is between -0.8825 and -1.645, and a performance score of -2 is assigned if the statistical score is equal to or less than (i.e., further below 0 than) -1.645. These statistical tests provide indicators of the level of confidence that differences in results between two samples are due to different levels of service, rather than random variation. A score of -1.645 provides a 95% confidence level that an apparent disparity is not due to random variation, while a score of -0.8225 only provides a 79% confidence level, or an over one-in-five chance that the apparent disparity reflects nothing more than random variation. For that reason, the current New York Plan converts a -1 score to a 0 score if Verizon provides parity service for the next two months, thereby indicating that the initial -1 score was due to random variation.

78. Moreover, even a 95% confidence level is not an indicator of the magnitude of a difference in results. As we noted above, in April 2001, Verizon's wholesale missed provisioning appointment rate for CLEC UNE-P orders was 0.33%, while Verizon missed 0.11% of the analogous retail appointments. Because there were significant volumes of appointments, a 0.22 percentage point difference with Verizon's retail performance was found to be statistically significant at the 95% confidence level. Thus, under the current New York Plan, a score of -2 would apply. However, that same score would apply if Verizon's wholesale performance had been 3.33% or even 33.33% – the confidence level is simply unrelated to the competitive significance of the parity miss. By contrast, for benchmark measurements, the current New York Plan assigns -1 and -2 scores based on the severity of the miss: for example, for a measurement with a 95% benchmark, performance between 90% and 95% is scored as a -1, while performance worse than 90% is scored as a -2.



79. For these reasons, Verizon's Modified NY Plan revises the scoring system for parity measurements. First, in Verizon's Modified NY Plan, Verizon will be found to have missed a parity measurement only when there is a 95% confidence level, under the statistical tests used in current New York Plan, that the apparent disparity is not due to random variation. This means that Verizon will pay penalties only when the statistical test produced a score equal to or less than -1.645. Second, -1 and -2 scores will then be assigned based on the severity of the performance miss. For example, on a missed appointment measurement, if Verizon's wholesale performance is no more than 5 percentage points worse than its retail performance, a -1 score will be assigned. If wholesale performance is more than 5 percentage points worse, a -2 score will be assigned. These modifications are consistent with prior determinations of the Pennsylvania PUC, which held that it "shall not use the absolute value of the modified Z-score to indicate the severity of the magnitude of [Verizon's] failure to provide parity." December 31, 1999 Order at 141.

80. This change also enables Verizon to distribute credits to the CLECs more quickly, increasing the ease of administering the Plan. As explained above, under the current New York Plan, -1 scores can be converted to 0 scores based on Verizon's performance in the following two months. Therefore, Verizon, the New York PSC, and the CLECs must wait those two months before it can be determined what Verizon owes under the current New York Plan. By contrast, under the Modified NY Plan, the amount of bill credits owed will be known, and can be paid, once Verizon's performance for that month is reported.

81. Third, Verizon has proposed modifying the flow through standard in the Mode of Entry and Special Provisions sections of the New York Plan. Specifically, for total flow through (OR-5-01), Verizon proposes that the standard will increase from 70% to 80% (the current

standard under the New York Plan) over the first year and a half the plan is in effect. Similarly, for achieved flow through, Verizon proposes that the standard will increase to 95% over that same time period, and will start with 84% for Resale and 86% for UNEs. Verizon has proposed the slightly lower initial benchmark for Resale orders, because a higher proportion of Resale than UNE orders are for Centrex service, which does not flow through.

82. As we have explained, flow through rates are determined in large part by CLECs' ability to submit accurate service orders. See supra ¶ 11. The market in Pennsylvania is less mature than in New York, meaning that CLECs have had less time to become proficient in submitting their service orders. Verizon plans to continue working with CLECs to help them improve their flow through percentages. In addition, Verizon has incentives beyond the Plan to increase flow through performance, as manual processing is far more expensive than automated processing of orders.

83. Fourth, Verizon has proposed modifying the Critical Measures section of the New York Plan. Unlike the Mode of Entry section, which reviews Verizon's performance on a variety of measurements, the Critical Measures section is based on the performance scores for individual measurements. Although a 95 percent confidence standard is used to determine when Verizon has missed a measurement in this section, that still leaves a 5 percent chance that random variation is the cause of the random disparity. Over a twelve month period, however, the chance that random variation will cause Verizon to miss a given Critical Measure in one of those months is 46 percent and in two of those months is 12 percent. By contrast, the probability of random variation resulting in a miss in three months is only 2 percent. Therefore, Verizon has proposed allowing -1 scores on critical measures to convert to 0 scores in as many as two months during a

Plan year, although a -1 may not be converted to a 0 if Verizon missed the standard in the previous month.

84. Fifth, Verizon has proposed that remedy payments available under the Modified NY Plan will supercede any performance plan in Verizon's interconnection agreements. This is different from the Plans in both New York, where CLECs can receive remedies under both the Plan and their interconnection agreement, and Massachusetts, where CLECs can receive remedies either under the Plan or under their interconnection agreement, but not both. This is consistent with the Pennsylvania PUC's determination that the purpose of a remedy plan "is to establish proper performance and quality of service parameters as well as financial incentives to encourage performance, rather than to compound penalties." Opinion and Order, Joint Petition of NEXTLINK Pennsylvania, Inc., et al., for an Order Establishing a Formal Investigation of Performance Standards, Remedies, and Operations Support Systems Testing for Bell Atlantic-Pennsylvania, Inc., Docket No. P-00991643, at 5 (Pa. Pub. Util. Comm'n rel. Oct. 16, 2000) (App. B, Tab R-13).

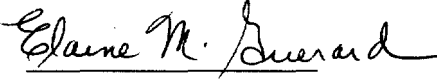
85. Other than these modifications, the Modified NY Plan is substantively identical to the current New York Plan.

86. CompTel is alone in arguing that the New York Plan provides insufficient incentives to deter backsliding, because it claims that Verizon hit the monthly cap for the DSL Mode of Entry in January 2001. See CompTel at 22. Not only is that claim untrue – the monthly cap on the DSL Mode of Entry is \$833,333 and Verizon paid about \$693,000 that month – but the New York Plan also clearly provided incentives for Verizon to improve its performance: Verizon has not paid that much again and, in May 2001, Verizon's performance had so improved that it paid nothing under the DSL Mode of Entry in New York.

87. This concludes our Reply Declaration.

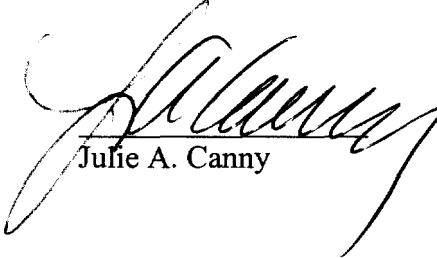
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 3, 2001

  
Elaine M. Guerard

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

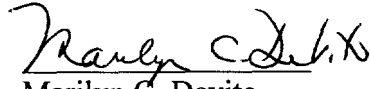
Executed on August \_\_, 2001



Julie A. Canny

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 3, 2001

  
Marilyn C. Devito